

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

MELODY JOY CANTU AND
DR. RODRIGO CANTU,

Plaintiffs,

V.

DR. SANDRA GUERRA and DIGITAL
FORENSICS CORPORATION, LLC,

Defendants.

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CIVIL ACTION NO. 5:20-CV-0746-JKP

**DEFENDANT DIGITAL FORENSICS CORPORATION, LLC'S
MOTION FOR LEAVE OR TO EXTEND TIME TO FILE RESPONSE TO
PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT**

TO THE HONORABLE UNITED STATES DISTRICT COURT:

Defendant Digital Forensics Corporation, LLC ("Defendant") seeks leave of Court or moves this Court to extend time so that Defendant can file its Response to Plaintiffs' Motion for Summary Judgment, and respectfully shows the Court as follows:

Summary

By Order dated August 11, 2022, the dispositive motion deadline was extended to October 14, 2022. Plaintiffs filed their Motion for Summary Judgment on October 14, 2022. Defendant Dr. Sandra Guerra filed her Response to Plaintiffs' Motion for Summary Judgment the afternoon of October 28, 2022. Counsel for Defendant Digital Forensics Corporation attempted to file Defendant's Response to Plaintiffs' Motion for Summary Judgment late that same afternoon of October 28, 2022 but was unable to do because Defendant's counsel realized that he was no longer able to file documents in this court since the NextGen CM/ECF electronic filing upgrade. As reflected in Exhibit A, Defendant's counsel submitted his NextGen CM/ECF electric filing registration at 5:43 p.m. CST, but it was not processed and approved until Monday, October 31,

2022. Defendant's counsel brought this issue to the attention of all counsel by email on Saturday, October 29, 2022 and attached a copy of Defendant's Response to Plaintiffs' Motion for Summary Judgment. For these reasons, Plaintiff will not be prejudiced by the extension of the response deadline. A three-day extension to the response deadline (October 28 to October 31) will not impact the judicial proceedings in this case or any possible impact is insignificant. The circumstances described above qualify as excusable neglect justifying excusing the three-day delay in this case. Finally, these circumstances clearly show that Defendant and its counsel have acted in good faith in attempting to file the Response to Plaintiff's Motion for Summary Judgment in a timely manner. Therefore, Defendant request that this Court grant leave or extend the response deadline allowing Defendant to file its Response to Plaintiff's Motion for Summary Judgment.

Argument

Fed. R. Civ. P. 6(b) provides for the extension of deadlines if a party shows good cause and that the failure to act is the result of excusable neglect. *Pioneer Inv. Servs. v. Brunswick Assocs.*, 507 U.S. 380 (1993). Factors to be considered when determining excusable neglect include (i) the danger of prejudice to the nonmovant, (ii) the length of the delay and its potential impact on judicial proceedings, (iii) the reason for the delay, including whether it was within the reasonable control of the movant, and (iv) whether the movant acted in good faith. 507 U.S. at 395.

Defendant Digital Forensics Corporate attempted to file its Response to Plaintiffs' Motion for Summary Judgment late on the afternoon of October 28, 2022 but was unable to do because Defendant's counsel realized that he was no longer able to file documents in this court since the NextGen CM/ECF electronic filing upgrade. *See* Declaration of J. David Apple which is attached hereto as Exhibit A. Upon realizing he was no longer able to electronically file documents with this Court, Defendant's counsel immediately submitted his NextGen CM/ECF electric filing

registration at 5:43 p.m. CST on October 28, 2022. However, the registration was not processed and approved until Monday, October 31, 2022. Realizing that the NextGen CM/ECF registration was not going to be processed and approved until Monday, October 31, 2022 and to avoid any possible prejudice to the other parties including Plaintiffs, Defendant's counsel brought this issue to the attention of all counsel by email on Saturday, October 29, 2022 and attached a copy of Defendant's Response to Plaintiffs' Motion for Summary Judgment that Defendant's counsel attempted to file the prior day. Now that Defendant's counsel can once again electronically file documents with this Court, leave of Court or an extension of the response deadline is required so that Defendant can file its Response to Plaintiffs' Motion for Summary Judgment.

Plaintiff will not be prejudiced by the requested short extension of the response deadline. Further, the three-day (or one business day) extension to the response will not impact the judicial proceedings in this case. The circumstances described above qualify as good cause and excusable neglect justifying excusing the three-day delay in this case. Finally, these circumstances clearly show that Defendant and its counsel have acted in good faith in attempting to file the Response to Plaintiff's Motion for Summary Judgment in a timely manner. Therefore, Defendant request that this Court grant leave or extend the response deadline allowing Defendant to file its Response to Plaintiff's Motion for Summary Judgment, a copy of which is attached hereto as Exhibit B.

WHEREFORE, Defendant respectfully request this Court to grant this its Motion for Leave or to Extend Time to File Response to Plaintiffs' Motion for Summary Judgment, and for such further relief to which it may be entitled.

Respectfully submitted,

By: /s/ J. David Apple
J. David Apple
State Bar No. 01278850

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735 Plaza Blvd., Suite 200
Coppell, Texas 75019
Telephone: (972) 315-1900
Facsimile: (972) 315-1955
Email: jdapple@applefinklaw.com

**ATTORNEYS FOR DEFENDANT DIGITAL
FORENSICS CORPORATION, LLC**

CERTIFICATE OF CONFERENCE

I hereby certify that on October 31, 2022, I conferred with counsel regarding this motion and that Defendant Dr. Sandra Guerra's counsel agreed to requested relief, but that Plaintiffs' counsel opposes the requested relief. Therefore, this motion is submitted to the Court for determination.

/s/ J. David Apple
J. David Apple

CERTIFICATE OF SERVICE

I hereby certify that on October 31, 2022, I electronically filed the foregoing document with the Clerk of the Court for the United States District Court, Western District of Texas, San Antonio Division, using the electronic case filing system of the court, which will send a “Notice of Electronic Filing” to the following counsel:

Tor Ekeland
Tor Ekeland Law, PLLC
195 Montague Street, 14th Floor
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tor@torekeland.com

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d/b/a Rain Minns Law Firm
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Ricardo G. Cedillo
Brandy C. Perry
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755 E. Mulberry, Suite 250
San Antonio, Texas 78212
rcedillo@lawdcm.com
bperry@lawdcm.com

/s/ J. David Apple
J. David Apple

EXHIBIT A

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

MELODY JOY CANTU AND
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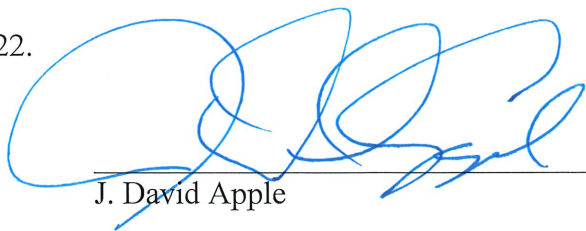
DECLARATION OF J. DAVID APPLE

I, J. David Appl, declare pursuant to 28 U.S.C. § 1746 as follows:

1. I am over 18 years of age and have never been convicted of a felony or crime involving moral turpitude. I am fully competent to make this affidavit. The facts stated in this affidavit are within my personal knowledge and are true and correct.
2. I and my law firm as counsel for Defendant Digital Forensics Corporation in this cause.
3. Prior to October 28, 2022, I was registered and approved to file documents with the federal district courts within the Western District of Texas through the CM/ECF electronic filing platform.
4. I attempted to file Defendant Digital Forensics Corporation's Response to Plaintiffs' Motion for Summary Judgment late on afternoon of October 28, 2022 but was unable to do. I realized for the first time that I was no longer able to file documents with courts in the Western District of Texas as a result of the NextGen CM/ECF electronic filing upgrade.
5. As confirmed in the email attached hereto as Exhibit 1, I submitted my NextGen CM/ECF electric filing registration at 5:43 p.m. CST, but it was not processed and approved until Monday, October 31, 2022.
6. As confirmed in the email attached hereto as Exhibit 2, I brought this issue to the attention of all counsel by email on Saturday, October 29, 2022 and attached a copy of Defendant's Response to Plaintiffs' Motion for Summary Judgment.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 31st day of October, 2022.



J. David Apple

EXHIBIT 1

Subject: NextGen CM/ECF Registration Status
From: do_not_reply@psc.uscourts.gov
To: jdapple@applefinklaw.com
Date Sent: Monday, October 31, 2022 10:33:00 AM GMT-05:00
Date Received: Monday, October 31, 2022 10:33:28 AM GMT-05:00

This email is notification that your NextGen CM/ECF electronic filing registration has been processed. You may check your E-Filing Status by visiting the "Manage My Account" section of the PACER web site and selecting "Check E-File Status" option from the "Maintenance" tab or use this link,
<https://pacer.psc.uscourts.gov/pscof/manage/efileStatus.jsf>.

Account Number: 2637634
Court: TEXAS WESTERN DISTRICT COURT Date/Time Submitted: 10/28/2022 17:43:42 CDT Transaction ID: 19783
Request: Registration
Transaction Status: Processed

NOTE: Please do not reply to this message. This is an automated message sent from an unmonitored mailbox. If you have questions or comments, please email them to txwd_ecf_help@txwd.uscourts.gov.

EXHIBIT 2

Subject: Cantu v Guerra et al

From: David Apple <jdapple@applefinklaw.com>

To: Tor Ekeland <tor@torekeland.com>, Brandy Peery <bpeery@lawdcm.com>, Ricardo Cedillo <rcedillo@lawdcm.com>, Rain Minns <rain@rainminnslaw.com>, Michael Hassard <Michael@torekeland.com>

Date Sent: Saturday, October 29, 2022 9:24:41 AM GMT-05:00

Date Received: Saturday, October 29, 2022 9:24:41 AM GMT-05:00

Attachments: Defendant DFC's Response to Plaintiffs' MSJ.pdf

Counsel,

I attempted to file the attached Response yesterday late afternoon and did not realize I was unable to file without adding the WD Texas to my Pacer account. I thought that was automatically done since I was already an approved filer when they changed to the NextGen filing system a month or so ago. So I went through the process to be accepted to file in the WD Tex but it has not been approved yet so I was unable to file the Response. Therefore, I plan to file a Motion for Leave to file the response late for this good cause reason. Would you agree to allow me to do so? If so, I will title the motion as "Agreed" and file it along with the Response on Monday. Thank you for your understanding and cooperation.

David

J. David Apple
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**DEFENDANT DIGITAL FORENSICS CORPORATION, LLC'S
RESPONSE TO PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT**

TO THE HONORABLE UNITED STATES DISTRICT COURT:

Defendant Digital Forensics Corporation, LLC (“Defendant”) hereby joins and incorporates in its entirety Defendant Dr. Sandra Guerra’s Response to Plaintiffs’ Motion for Summary Judgment [Doc. 110], and for the same reasons and based upon the same facts, evidence and authority set forth therein, respectfully requests that the Court deny Plaintiffs’ Motion for Summary Judgment in all respects and grant Defendant such other and further relief, both general and special, at law or in equity, to which it may be justly entitled.

Respectfully submitted,

By: /s/ J. David Apple
J. David Apple
State Bar No. 01278850

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/s/ J. David Apple
J. David Apple

EXHIBIT B

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